IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1977

No. 77-1008

SIOUX CITY AND NEW ORLEANS BARGE LINES, INC.,
Petitioner,

v.

HELENA MARINE SERVICE, INC., as Owner
of the Barge HMS-6,
Respondent.

PETITION FOR A WRIT OF CERTIORARI

To the United States Court of Appeals
for the Eighth Circuit

MICHAEL D. O'KEEFE
CHARLES A. NEWMAN
THOMPSON & MITCHELL
One Mercantile Center, Suite 3400
St. Louis, Missouri 63101
(314) 231-7676
Attorneys for Petitioner

St. Louis Law Printing Co., Inc., 812 Olive Street 63101 314-231-4477

TABLE OF CONTENTS

Cases

Statutes

Rules

Miscellaneous Authority

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1977

No. .....

SIOUX CITY AND NEW ORLEANS BARGE LINES, INC.,
Petitioner,

v.

HELENA MARINE SERVICE, INC., as Owner
of the Barge HMS-6,
Respondent.

PETITION FOR A WRIT OF CERTIORARI

To the United States Court of Appeals for the Eighth Circuit

Sioux City and New Orleans Barge Lines ("Sioux City"), petitioner herein, respectfully prays that a writ of certiorari be issued to review the judgment of the United States Court of Appeals for the Eighth Circuit entered in this case on October 17, 1977.

OPINIONS BELOW

The order of the district court, filed on October 20, 1976 is not reported but is reproduced in Appendix A, *infra*. The opinion of the Eighth Circuit Court of Appeals is officially reported at 564 F.2d 15 and is reproduced in Appendix B, *infra*.

JURISDICTION

The judgment of the United States Court of Appeals was filed on October 17, 1977 and this petition for certiorari was filed within ninety days of that date. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

QUESTION PRESENTED

Whether the opinion of the Eighth Circuit,, refusing to dissolve an injunction issued in a limitation of liability Admiralty action, is erroneous as a matter of law and contravenes the provisions of the Limited Liability Act, 46 U.S.C. §181 *et seq.*, and an opinion of this Court.

STATUTES INVOLVED

28 U.S.C. § 1333(1) provides:

"The district courts shall have original jurisdiction, exclusive of the courts of the States, of:

"(1) Any civil case of admiralty or maritime jurisdiction, saving to suitors in all cases all other remedies to which they are otherwise entitled.

46 U.S.C. § 185 provides:

"The vessel owner, within six months after a claimant shall have given to or filed with such owner written notice of claim, may petition a district court of the United States of competent jurisdiction for limitation of liability within the provisions of this chapter and the owner (a) shall deposit with the court, for the benefit of claimants,

a sum equal to the amount or value of the interest of such owner in the vessel and freight, or approved security therefor, and in addition such sums, or approved security therefor, as the court may from time to time fix as necessary to carry out the provisions of section 183 of this title, or (b) at his option shall transfer, for the benefit of claimants, to a trustee to be appointed by the court his interest in the vessel and freight, together with such sums, or approved security therefor, as the court may from time to time fix as necessary to carry out the provisions of section 183 of this title. Upon compliance with the requirements of this section all claims and proceedings against the owner with respect to the matter in question shall cease."

STATEMENT OF THE CASE

On or about November 3, 1974, Edith Fiers was working as a cook on the M/V LEXINGTON, a river towboat owned and operated by Sioux City.[1] At that time, Helena Marine Service, Inc. ("Helena"), undertook to transport Edith Fiers from the M/V LEXINGTON in the middle of the Mississippi River to the shore at or near Helena, Arkansas. In stepping between Helena's harbor tug and a barge owned by Helena (HMS-6), Ms. Fiers fell and sustained a serious injury.

On June 4, 1975, Ms. Fiers filed suit against Sioux City in the Circuit Court for the Twentieth Judicial Circuit, St. Clair County, State of Illinois, pursuant to the Jones Act, 46 U.S.C. § 688 *et seq.*, for said injuries.

---

[1] Due to the procedural posture of this case, the facts presented were not adduced by testimony or evidence. Rather, they are compiled from the pleadings filed in the district court and the docket entries. Therefore, there are no citations to a transcript. These facts presented are not, however, disputed by any party.

On July 11, 1975, Helena filed a complaint, together with a bond, in the instant action, and thereby commenced a limitation of liability proceeding, in the United States District Court for the Eastern District of Arkansas. Helena sought alternatively exoneration from, or limitation of liability as provided by 46 U.S.C. § 181, *et seq.* Pursuant to Supplemental Rule F(3) Fed. R. Civ. P. and based upon the complaint, on July 11, 1975, the District Court issued an injunction against the prosecution of any claim against Helena or the HMS-6 except by the filing of claims in the limitation proceeding. Claimants were ordered to file claims in the district court before August 29, 1975.

On August 22, 1975, Sioux City filed a claim against Helena in the limitation proceeding for indemnity for any judgment Edith Fiers should recover against Sioux City in her action in the State Court of Illinois and for its attorneys' fees and costs in defending said action. No other claims were filed.

On September 8, 1975, the District Court entered an Order noting defaults and barring the filing of any other claims. On October 6, 1975, Helena filed a list of claimants, pursuant to Supplemental Rule F(6) Fed.R.Civ.P. That list revealed that Sioux City was the sole claimant in this action.

Being the sole claimant, on April 13, 1976, Sioux City moved to dissolve the injunction. In support of its motion to dissolve, Sioux City conceded the sufficiency of the bond deposited by Helena as being the approximate value of HMS-6, waived any claim of res judicata relevant to the issue of limitation of liability, and conceded Helena's right to try all limitation of liability issues in the district court. Nevertheless, the district court denied Sioux City's motion.

Sioux City then appealed to the Court of Appeals for the Eighth Circuit. The Eighth Circuit affirmed the judgment of the district court and ruled that the district court did not abuse

its discretion in denying Sioux City's motion to dissolve [Apx. B, *infra*]. The rationale of the Eighth Circuit was that although Sioux City had filed the only claim in the limitation proceeding, Edith Fiers had not filed a claim in that proceeding, and the district court had barred the filing of any further claims. nevertheless, there was still a viable, separate and distinct claim which Edith Fiers might some day attempt to file and, therefore, the limitation injunction need not be dissolved.

REASONS FOR GRANTING THE WRIT

I

The Eighth Circuit Has Decided a Federal Question in a Way in Conflict With Applicable Decisions of This Court.

In *Langnes v. Green*, 282 U.S. 531 (1931), this Court was directly confronted with the issue of whether a single claimant in a limitation case could pursue its state court remedy granted by 28 U.S.C. § 1333. In that case, the owner of a fishing vessel, THE ALOHA, had been sued in Washington state court by one of his employees for personal injuries. The owner of the vessel invoked his right to seek limitation of liability in the district court granted by 46 U.S.C. § 181 *et seq*. Pursuant to 46 U.S.C. § 185, the district court issued an injunction prohibiting the filing of claims except in the limitation proceeding. The employee, Green, filed the sole claim in that proceeding. Green then sought to dissolve the injunction in order to proceed with his state court remedy. The district court denied that motion. *Petition of Langnes*, 32 F.2d 284 (W.D.Wash. 1929). The Court of Appeals for the Ninth Circuit reversed on grounds not applicable here, but approved the district court's denial of the motion to dissolve the injunction. *THE ALOHA*, 35 F.2d 447 (9th Cir. 1929). The Supreme Court granted its writ of certiorari in *Langnes* to review the decision of the United States Circuit Court of Appeals for the Ninth Circuit. In considering the claimant's motion to dissolve the injunction in a single claim case, this Court resolved the conflict between 46 U.S.C. § 185 and 28 U.S.C. § 41(3) [the predecessor to 28 U.S.C. § 1333] by ruling that the issue was not one of jurisdiction but rather one of discretion. The Court further ruled that in a proper exercise of discretion, the district court could reconcile the apparent conflict in those statutes by allowing the state court action to proceed subject to certain conditions, namely, retaining jurisdiction of the

petition for limitation of liability in the unlikely event that the right of the petitioner to limit liability be brought into question in the state court or the case otherwise assume such form in that court as to bring it within the exclusive power of a Court of Admiralty.

Excepting the decision of the Eighth Circuit herein, all of the inferior federal courts have followed this Court's opinion in *Langnes*.[2]

The two leading admiralty commentators, *Gilmore and Black*, have set out the procedure to be followed in single claim cases:

> "The procedure which has been worked out under the Green cases is as follows: a single claim plaintiff who wishes to prosecute a common law action after the shipowner has filed a petition for limitation must
>
> a) file his claim in the limitation proceeding;
>
> b) where a stipulation for value has been filed in lieu of the transfer of the ship to a trustee, concede the sufficiency in amount of the stipulation;
>
> c) consent to waive any claim of *res judicata* relevant to the issue of limited liability based on any judgment obtained in the state court;
>
> d) concede petitioner shipowner's right to litigate all issues relating to limitation in the limitation proceeding." G. Gilmore and C. Black, *The Law of Admiralty* (871 2d ed. 1975).

Although Sioux City has met all of the foregoing conditions in the instant case and despite an overwhelming authority to

---

[2] *George J. Waldie Towing Co. v. Ricca*, 227 F.2d 900 (2d Cir. 1956);
Petition of Red Star Barge Line, 160 F.2d 436 (2d Cir. 1947);
E.g., The Helen L, 109 F.2d 884 (9th Cir. 1940).

the contrary, the Eighth Circuit Court of Appeals refused to dissolve the injunction herein.

To distinguish this case from *Langnes v. Green*, 282 U.S. 531 (1931), the Eighth Circuit relied on the following quotation from *Langnes*:

> "Here the petition alleged that petitioner feared other claims, but no other claims were filed in response to the monition; the time therefor had expired and default had been noted; and nothing appears to suggest the possibility of any other claim. * * *" *Id.* at 540.

In the instant case, no other claims other than that of Sioux City had been filed; the time for filing claims had expired and default had been noted; yet the Eighth Circuit with amazing powers of clairvoyance speculated that a viable, separate and distinct claim could still be asserted by Ms. Fiers. Accordingly, it determined that this inchoate, speculative claim precluded the dissolution of the existence of the injunction, and it denied Sioux City its statutory right under 28 U.S.C. § 1333 to have the injunction dissolved.

Sioux City's claim in the limitation proceeding is a claim for indemnity for any damages it may suffer as a result of Ms. Fiers' state court action against it. The Eighth Circuit cited no authority for its ruling that Ms. Fiers' speculative claim was a separate and distinct claim from Sioux City's indemnity claim and, indeed, all the authority is to the contrary.[3] Limitation of liability, properly invoked, is still frequently utilized in single claim cases. Therefore, this erroneous ruling has grave ramifications and should be promptly corrected by this Court.

---

[3] *E.g., In re Humble Oil & Refining Co.*, 210 F.Supp. 638 (S.D. Tex. 1961), *aff'd sub nom., Humble Oil & Refining Co. v. Reagan*, 311 F.2d 576 (5th Cir. 1962); *In re Republic of South Korea*, 175 F.Supp. 732 (D.Ore. 1959); *Petition of M.P. Howlett*, 75 F.Supp. 438 (1948).

II

The Eighth Circuit Decision Is in Conflict With the Decision of Another Court of Appeals and With Authority in Other Districts.

This Court, pursuant to Supreme Court Rule 19(1)(b), should issue its writ of certiorari because of the conflicts between the Eighth Circuit's opinion herein and those of the United States Court of Appeals for the Fifth Circuit, the United States District Court of Oregon, and the United States District Court for the Eastern District of New York.

The Fifth Circuit in *Humble Oil & Refining Co. v. Reagan*, 311 F.2d 576 (1962), *affirming, In re Humble Oil & Refining Co.*, 210 F.Supp. 638 (S.D. Tex. 1961), specifically rejected the interpretation of what constitutes a single claim vis-a-vis separate and distinct claims adopted by the Eighth Circuit herein. In that case, the court ruled that the claims of a party seeking recovery in her own right and in a representative capacity for the death of a deceased son; a claim of the employer of the deceased for indemnification; and a claim of an insurance company seeking subrogation for monies paid to the claimant under a state Workmen's Compensation Act, all constituted a *single* claim and not separate and distinct claims. Thus, the Fifth Circuit correctly stated:

> "The claim of Travelers Insurance Company is derivative of the one presented by Mrs. Reagan. Travelers seeks only that to which it is entitled as a subrogee under the Texas Workmen's Compensation Act. As to Mrs. Reagan and the Travelers Insurance Company there is only one claim sought to be enforced against Humble, and it is that of Mrs. Reagan." 210 F.Supp. at 639-40.

Similarly, the District Court for the District of Oregon in *The Petition of Republic of (South) Korea*, 175 F.Supp. 732

(1959), specifically ruled that a claim for personal injuries by a plaintiff and a claim for indemnity, court costs and expenses incurred by a party contingently liable, constitutes a "single claim" for limitation of liability purposes.

> "This Court firmly concludes that under the present posture of these proceedings they constitute a 'single claim' case . . ." *Id.* at 735.

The United States District Court for the Eastern District of New York has ruled that the claim of an employee for personal injuries and the claim of the employer's insurer for money paid pursuant to a workmen's compensation statute as a result of those injuries are but a "single claim" for limitation of liability purposes. *Petition of M.P. Howlett*, 75 F.Supp. 438 (1948).

Accordingly, the opinion of the Eighth Circuit herein conflicts with that of the Fifth Circuit and with the opinions of the District Court for the District of Oregon and the Eastern District of New York. It is appropriate that this Court grant this petition for a writ of certiorari in order to resolve the inter-circuit conflict and the conflict with district court authority, which has resulted, and to prevent further inter-circuit conflict.

III

The Eighth Circuit's Opinion Sanctions a Departure From the Accepted and Usual Course of Judicial Proceedings and Warrants an Exercise of This Court's Power of Supervision.

The decision of the Eighth Circuit has broad and serious ramifications which sanction a departure from the accepted and usual course of limitation of liability proceedings in the district courts. The ruling that a shipowner need only allege in its complaint the possibility of a potential claim being filed against it, even though no claim has been filed, when the time for filing

claims has expired and a default has been noted, grants shipowners and their insurers an arsenal of tactics, heretofore unknown, to deny injured claimants their rights to a jury trial pursuant to 28 U.S.C. § 1333.

Two demonstrative examples cogently prove the impropriety of the Eighth Circuit's opinion and its ramifications. First, in the case of an injury, the shipowner or its insurer may refuse to pay the medical bills incurred by the injured plaintiff and allege the existence of potential outstanding claims by the hospital and the physician. Secondly, in the case of a death, the same position could be asserted by the shipowner or insurer as to the funeral bill. In both instances, the plaintiff's right to a jury trial would be subverted and the benevolent principles of Admiralty which require the prompt compensation of seamen would be defeated.

Thus, it is evident that the opinion rendered herein sanctions a radical and serious departure from the accepted and usual course of limitation of liability actions in Admiralty. It is contrary to precedent, defeats the principles of Admiralty and is an unwarranted and improper judicial expansion of the Limited Liability Act contrary to the following admonition of this Court in *Maryland Cas. Co. v. Cushing*, 347 U.S. 409, 437 (1953):

> "Judicial expansion of the Limited Liability Act at this date seems especially inappropriate. Many of the conditions in the shipping industry which induced the 1851 Congress to pass the Act no longer prevail. And later Congresses, when they wished to aid shipping, provided subsidies paid out of the public treasury rather than subsidies paid by injured persons."

Therefore, this Honorable Court should exercise its power of supervision over the Eighth Circuit and grant the writ of certiorari.

CONCLUSION

For the above reasons, this Honorable Court should issue its writ of certiorari to review the decision of the Court of Appeals for the Eighth Circuit.

Respectfully submitted,

MICHAEL D. O'KEEFE

CHARLES A. NEWMAN
THOMPSON & MITCHELL
One Mercantile Center, Suite 3400
St. Louis, Missouri 63101
(314) 231-7676
Attorneys for Petitioner,
Sioux City and New
Orleans Barge Lines

APPENDIX

APPENDIX A

In the United States District Court
Eastern District of Arkansas
Eastern Division

In the Matter of Helena Marine Service, Inc., as Owner of the Barge HMS-6, Praying for Exoneration From or Limitation of Liability	No. H-75-C-28.

ORDER

(Filed October 20, 1976)

Helena Marine Service, Inc., owner of the Barge HMS-6, filed its petition herein for exoneration from or limitation of liability, pursuant to 46 U.S.C. §§181, et seq., together with an appraisal of value of the vessel and a bond for the amount thereof. After notification of potential claimants, only one claim was filed within the time permitted. That claimant has now filed a Motion to Dissolve the injunction entered restraining actions against petitioner other than in this proceeding. Both petitioner and claimant have filed briefs and requested that the motion be submitted on the basis of the briefs, without oral argument.

The Court has reviewed the briefs and finds the situation to be as follows: Mrs. Edith Fiers sustained serious personal injuries aboard the HMS-6 while it was tied to the shore at Helena, Arkansas. Mrs. Fiers has filed a complaint against the claimant herein, Sioux City and New Orleans Barge Lines,

Inc., in the Circuit Court for the Twentieth Judicial Circuit, St. Clair County, Illinois, for damages arising out of her injuries in that incident under the Jones Act. The claimant contends that since only its claim has been filed herein, and it has agreed to the amount of the limitation, but reserved the right to contest its applicability only in this action, the injunction should be dissolved to permit Helena Marine Service to be brought into the Illinois state court action as a third party defendant to permit claimant to assert liability over by way of indemnity. This would, however, make Helena Marine Service amenable to a direct action by Mrs. Fiers, in spite of her default in asserting her claim herein. Further, the Court does not perceive that claimant has a cause of action against Helena Marine Service under its claim of indemnity unless and until it has completed the proceedings in the state court, resulting in judgment against claimant, which claimant has paid. Until these matters have been finally determined, a cause of action for indemnity would be premature. Claimant further asserts no compelling reason for the dissolution of the injunction and fails to set out any prejudice which might result to it should the injunction be continued and this Court determine those matters over which it has taken jurisdiction in this proceeding.

It Is, Therefore, Considered and Ordered that the motion of the claimant, Sioux City and New Orleans Barge Lines, Inc., for dissolution of the injunction issued herein on July 22, 1976, be and the same is hereby denied.
Dated: October 18, 1976.

OREN HARRIS
United States District Court

APPENDIX B

United States Court of Appeals for the Eighth Circuit

No. 76-2027

In the Matter of Helena Marine Service, Inc. Helena Marine Service, Inc., as Owner of the Barge HMS-6, Appellee, v. Sioux City and New Orleans Barge Lines, Inc., Appellant.	Appeal from the United States District Court for the District Court of Arkansas.

Submitted: May 19, 1977

Filed: October 17, 1977

Before Gibson, Chief Judge, Van Oosterhout, Senior Circuit Judge, and Webster, Circuit Judge.

Webster, Circuit Judge.

Sioux City and New Orleans Barge Lines, Inc. (Sioux City) appeals from the District Court's denial of its motion to dissolve an injunction entered in a limitation of liability proceeding.

Sioux City is the owner of the M/V Lexington, a towboat operating on the Mississippi River. On November 3, 1974, Mrs. Edith Fiers, a cook on the Lexington, was injured while on board the barge HMS-6, which she was using a a means

of egress from the Lexington to shore at Helena, Arkansas. The HMS-6 is owned by Helena Marine Service, Inc. (Helena).

Mrs. Fiers filed a Jones Act claim against Sioux City in the Circuit Court of St. Clair County, Illinois, seeking compensation for her injuries. On July 11, 1975, Helena filed the instant action in the Eastern District of Arkansas, seeking alternatively exoneration from liability or limitation of liability as provided by 46 U.S.C. §181 *et seq*. Helena sought to fulfill the statutory preconditions to limitation, including the deposit into the court of $15,000, representing the value of the HMS-6. On July 22, 1975, the District Court,[1] as is the practice in limitation of liability cases, granted an injunction against the prosecution of any claim against Helena or the HMS-6 except by filing a claim in the limitation proceeding. Claimants were ordered to file claims in the District Court before August 29, 1975.

On August 22, 1975, Sioux City filed a claim, stating that it had been sued by Mrs. Fiers in Illinois, that any injury to Mrs. Fiers was the result of negligence and breach of warranty of workmanlike performance by Helena, and that it was therefore entitled to recover from Helena both indemnity for any judgment against it in favor of Mrs. Fiers, and its attorney fees and costs in the Illinois action. Sioux City's was the only claim in the limitations proceedings. Mrs. Fiers has filed no claim against Helena in any court.

On April 13, 1976, Sioux City moved to dissolve the injunction. Its avowed purpose was to join Helena as third party defendant in the Illinois action. In support of its motion to dissolve, Sioux City conceded the sufficiency of the $15,000 deposited as the value of the HMS-6, waived any claim of res judicata as relevant to the issue of limitation of liability, and

[1] The Honorable Oren Harris, United States District Court for the Eastern District of Arkansas.

conceded Helena's right to try all limitation of liability issues in the District Court.[2]

The District Court denied the motion to dissolve the injunction The Court reasoned:

> [To dissolve the injunction would] make Helena Marine Service amenable to a direct action by Mrs. Fiers, in spite of her default in asserting her claim herein. Further, the Court does not perceive that claimant has a cause of action against Helena Marine Service under its claim of indemnity unless and until it has completed the proceedings in the state court, resulting in judgment against claimant, which claimant has paid. Until these matters have been finally determined, a cause of action for indemnity would be premature. Claimant further asserts no compelling reason for the dissolution of the injunction and fails to set out any prejudice which might result to it should the injunction be continued and this Court determine those matters over which it has taken jurisdiction in this proceeding.

Sioux City appeals the Court's refusal to dissolve the injunction. Jurisdiction for this appeal is found in 28 U.S.C. §1292 (a)(1).

The purpose of the Limitation of Liability Act, 46 U.S.C. §181 *et seq.*, is to assure "that the liability for any damage arising from a disaster at sea which is occasioned without the privity or knowledge of the shipowner shall in no case exceed the value of the vessel at fault together with her pending freight, 46 U.S.C. §183." *Lake Tankers Corp. v. Henn*, 354 U.S. 147, 150 (1957). To achieve this purpose, the statute provides that upon tender to the court of a bond equal in

[2] Sioux City's stipulation satisfied the formal requisites of *In re Red Star Barge Line*, 160 F.2d 436 (2d Cir.), *cert. denied*, 331 U.S. 850 (1946).

value to the owner's interest in the vessel and freight, or of that interest itself. "all claims and proceedings against the owner with respect to the matter in question will cease." 46 U.S.C. §185. The District Court having jurisdiction customarily exercises its power to issue a restraining order or an injunction staying all other proceedings. 3 E. Benedict, Admiralty §52 at 6-8 (7th ed. 1975). *See, e.g., Pershing Auto Rentals, Inc. v. Gaffney*, 279 F.2d 546, 547 (5th Cir. 1960); *In re Red Star Barge Line*, 160 F.2d 436, 436 (2d Cir. 1947); *In Re Indiana Farm Bureau Cooperative Ass'n*, 235 F. Supp. 800, 801 (S.D. Ill. 1964).

In administering equitable relief under §185, and particularly in deciding whether to dissolve the stay of proceedings to allow claimants to proceed against the shipowner in other courts, the District Court exercises broad equitable discretion. *Langnes v. Green*, 282 U.S. 531, 541 (1937); *Ex parte Green*, 286 U.S. 437, 438 (1932).

> The term "discretion" denotes the absence of a hard and fast rule. . . . When invoked as a guide to judicial action it means a sound discretion, that is to say, a discretion exercised not arbitrarily or wilfully, but with regard to what is right and equitable under the circumstances and the law, and directed by the reason and conscience of the judge to a just result.

Langnes v. Green, supra, 282 U.S. at 541.

Two Supreme Court decisions have limited the extent to which a district court may exercise this discretion in a limitation proceeding when a motion to dissolve the injunction is presented. In *Langnes v. Green, supra*, the Supreme Court held that the District Court had abused its discretion in refusing to dissolve its stay when only one claimant appeared in the limitation of liability proceeding and nothing appeared to suggest the possibility of other claimants. On the basis of *Langnes*, a

refusal to dissolve the stay is usually an abuse of discretion in a clear single-claimant case. *The Helen L*, 109 F.2d 884, 886 (9th Cir. 1940); *In Re Putnam*, 55 F.2d 73 (2d Cir.), *cert. denied*, 286 U.S. 558 (1932); *See In re Red Star Barge Line, supra*, 160 F.2d at 437; *In re Trawler Weymouth, Inc.*, 223 F. Supp. 161, 163 (D. Mass. 1963). The shipowner's interest in limiting liability can be adequately protected in such a case by permitting the claimant to stipulate as set out in *In re Red Star Barge Lines, supra*, and to pursue his common law remedies in another forum.

A second restriction on the court's discretion is found in *Lake Tankers Corp. v. Henn, supra*, where the Court found that a refusal to dissolve the stay was an abuse of discretion when the total of the claims filed against the shipowner did not exceed the limitation fund.[3]

In this appeal, Sioux City rests its claim to dissolution of the stay upon *Langnes v. Green, supra*. It is therefore necessary for it to demonstrate that this is a single-claim case. Helena contends that, because Sioux City has filed a claim against it in the limitation proceeding, and Mrs. Fiers also has a potential claim against it, this is not a single-claim case. Sioux City argues to the contrary: (1) that Mrs. Fiers has not filed a claim against Helena anywhere, and is not likely to do so; and (2) that Sioux City's claim is derivative of Mrs. Fiers', so that the two claims are in fact one.

---

[3] Both *Langnes v. Green*, 282 U.S. 531 (1931) and *Lake Tankers Corp. v. Henn*, 354 U.S. 147 (1957), resulted from the need to reconcile the Limitation of Liability Act with 28 U.S.C. §1333, which grants jurisdiction over admiralty and maritime cases, "saving to suitors in all cases all other remedies to which they are otherwise entitled." In the fact situations presented by *Langnes* and *Lake Tankers*, a concursus was not necessary to protect the shipowner from liability in excess of the limitation fund; hence the stay of proceedings was dissolved to preserve the claimants' other remedies. *See Lake Tankers Corp. v. Henn, supra*, 354 U.S. at 152-53.

Mrs. Fiers' Default

This action was filed in July, 1975. Mrs. Fiers, who is proceeding with her action against Sioux City in Illinois state court, has not sought relief against Helena either below or in the Illinois proceeding. The time period for filing claims in the limitation proceeding has expired. Sioux City claims that this can properly be treated as a single-claim case because the possibility of Mrs. Fiers' filing a claim against Helena is now remote.

In determining whether to dissolve the stay of other proceedings, however, a court should not merely consider claims that have been filed. In *Langnes v. Green*, the Court noted that no claims had been filed within the time specified in the limitation proceeding, and also that "nothing appears to suggest the possibility of any other claim." 282 U.S. at 540. *See also The Helen L, supra*, 109 F.2d at 886 (dissolution required where "[b]ut one claimant appeared in response to the monition and it is not contended that there may be others"); *The Lake Ellendale*, 53 F.2d 415 (E.D.N.Y. 1931) (a multiple-claim suit exists even when two of three claimants have signed releases and have not filed claims).

Mrs. Fiers has a potential claim against Helena, whose negligence Sioux City alleges to be the direct cause of her injury. While she did not assert that claim within the requisite period in the limitation proceeding, this does not necessarily bar her from asserting it later. Timely filing of claims in the limitation proceeding is not jurisdictional; courts have entertained claims that were not timely filed.[4] *See, e.g., Meyer v. New England Fish Co. of Oregon*, 136 F.2d 315 (9th Cir.), *cert.*

[4] We do not mean to suggest, of course, that the District Court must now entertain a claim by Mrs. Fiers against Helena if one is presented. Waiver of the default is a matter within the discretion of the District Court, and we intimate no opinion on the question.

denied, 320 U.S. 771 (1943); *see* G. Gilmore & C. Black, The Law of Admiralty § 10-15 at 853, n.54a (2d ed. 1975).

While it is true that the injunction, if now dissolved, could be reinstated if Mrs. Fiers were in fact to file her claim, or should she cross-claim against Helena if Helena were impleaded in Illinois, it does not follow that it is an abuse of discretion to refuse to do so in this case.

Nature of Mrs. Fiers' Claim

Sioux City contends that, even if Mrs. Fiers were to prosecute her claim against Helena, her claim and theirs would in fact be a single claim for purposes of *Langnes v. Green*. Sioux City claims indemnity for any judgment it is required to pay in favor of Mrs. Fiers. The nature of an indemnity claim suggests that between them, Mrs. Fiers and Sioux City could recover from Helena no more than the amount of a single judgment in favor of Mrs. Fiers.[5] There would be no need for the concursus that is the purpose of the Limitation of Liability Act.

Sioux City, however, is also seeking recovery on its own behalf for its expenses in defending Mrs. Fiers' claim. Their separate claim is not measured by Mrs. Fiers' recovery. A direct suit by Mrs. Fiers against Helena could then violate the statutory right to limitation. The aggregate of the two judgments may be greater than the limitation amount. This is precisely the result that the Limitation of Liability Act is intended to prevent.

[5] *See In re Humble Oil & Refining Co.*, 210 F. Supp. 638 (S.D. Tex. 1961), *aff'd sub nom., Humble Oil & Refining Co. v. Reagan*, 311 F.2d 576 (5th Cir. 1962); *In re Republic of South Korea*, 175 F. Supp. 732 (D. Ore. 1959) (both cases treat (1) the claims of an injured party and (2) the claims of a third party, liable for the injury but entitled to indemnity from the shipowner, as a single claim under *Langnes v. Green, supra*).

See Pershing Auto Rentals, Inc. v. Gaffney, supra, 279 F.2d at 550-51.[6]

We conclude, therefore, that the District Court did not err in denying dissolution of the injunction.[7] The judgment of the District Court is affirmed.[8]

A true copy.

Attest:

Clerk, U. S. Court of Appeals, Eighth Circuit

---

[6] The court in *In re Republic of South Korea, supra,* treated the injured party and the party seeking indemnity as a single claimant (*see* note 5, *supra*), notwithstanding the indemnitee's claim against the vessel owner for the costs of its defense against the injured party's claim. The court did not, however, analyze the consequences of permitting the two parties to recover judgments against the vessel owner in differing amounts. Its opinion, for this reason, is not persuasive.

[7] Sioux City argues that it would be subject to the risk of inconsistent judgments if the injunction were continued. The Illinois state court might find Sioux City liable to Mr. Fiers for Helena's negligence, and the District Court might then find that Helena was not negligent, thereby denying Sioux City indemnity. In a federal system however, the risk of inconsistent adjudications is not peculiar to this context. It is a risk which must be borne as a consequence of the federal policy permitting a shipowner to litigate all claims against it in a single forum and to limit its liability to the value of the vessel plus its freight. We note further that, in contrast to *Langnes v. Green, supra,* Helena's limitation action in federal court predated any claim against it in state court.

[8] The District Court appears to have based its denial of the motion for dissolution in part upon a belief that Sioux City did not have a cause of action against Helena "unless and until it has completed the proceedings in the state court, resulting in judgment against [Sioux City], which [Sioux City] has paid." This contention is erroneous. Fed. R. Civ. P. 14(a) allows impleader "[a]t any time after commencement of the action" of one who "may be liable to" the defendant "for all or part of the plaintiff's claim against him." Illinois procedure is similar. *See* Ill. Ann. Stat. ch. 110, §25 (Smith-Hurd). The reasons discussed in this opinion, however, are sufficient to support the order of the District Court.

In the Supreme Court of the United States

OCTOBER TERM, 1977

NO. 77 - 1008

SIOUX CITY AND NEW ORLEANS BARGE LINES, INC.,

Petitioner

versus

HELENA MARINE SERVICE, INC., as Owner of the Barge HMS-6,

Respondent

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

To the United States Court of Appeals
For the Eighth Circuit

JONES, WALKER, WAECHTER, POITEVENT, CARRERE & DENEGRE
ROBERT M. CONTOIS, JR.
3501 North Causeway Boulevard
9th Floor
Metairie, Louisiana 70002
Telephone: (504) 837-5325

Attorneys for Respondent

A B Letter Service, Inc.,327 Chartres St.,New Orleans, La.(504)581-5555

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1977

NO. 77-1008

SIOUX CITY AND NEW ORLEANS BARGE LINES, INC.,

Petitioner

versus

HELENA MARINE SERVICE, INC.,
as Owner of the Barge HMS-6,

Respondent

OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

To the United States Court of Appeals
for the Eighth Circuit

Respondent, Helena Marine Service, Inc., opposes the application of petitioner, Sioux City and New Orleans Barge Lines, Inc., for a writ of certiorari to review the decision of the United States Court of Appeals for the Eighth Circuit in this matter. Petitioner has failed to demonstrate grounds for granting a writ in accordance with Rule 19 of this Court.

ARGUMENT

I.

The Decision of the Court of Appeals Is In Harmony With Prior Decisions of This Court

Petitioner contends that the decision of this Court in *Langnes v. Green*, 282 U.S. 531 (1931), compels a reversal of the appellate court's decision in this matter. To the contrary, respondent submits that the Court of Appeals properly applied the principles set forth in the *Langnes* decision.

The dispute in *Langnes* was whether a district court should dissolve an injunction issued in a limitation proceeding in order to permit a single claimant to pursue a remedy in a common law forum. This Court ruled that the court below should have exercised its discretion to permit a common law remedy under the facts of that case. There are factual distinctions between the *Langnes* case and the situation before the Court in these proceedings:

a. In *Langnes*, the state court proceeding was filed four months before the limitation proceeding, and the limitation was filed only two days before trial in the state court. No suit was filed against Helena Marine before limitation was sought in these proceedings, and Helena has not used these proceedings to take jurisdiction from a common law court in a pending action.

b. In *Langnes*, the court emphasized that the nature of the accident and the surrounding circumstances created a presumption that no other claims existed. Both the District Judge and the Court of Appeals have emphasized in their decisions in this matter that Sioux City's claim is not the only claim facing Helena Marine; in fact, Sioux City wants the injunction dissolved for the avowed purpose of filing a third-party action against Helena Marine in the very proceedings where the other claim is being asserted.

In relying on *Langnes v. Green*, petitioner has failed to take into consideration the subsequent history of that case reported in *Ex Parte Green*, 286 U.S. 437, 76 L.Ed. 1212 (1932). After the claimant there had been permitted to proceed with his common law action, developments during the course of the trial made it mandatory for the federal district court to re-issue its injunction. Apparently, the issues that were sought to be tried in the common law proceeding were inextricably interwoven with the limitation issue. Under those circumstances, the jurisdiction of the federal court became exclusive, and the state court action could not be prosecuted further. See *Famiano v. Enyeart*, 398 F.2d 661 (7th Cir. 1968).

For reasons beyond this record, Mrs. Fiers elected not to assert a claim in the limitation proceeding. It is clear, however, that she is pursuing a claim arising out of her accident in the Illinois state court. If the injunction were dissolved, and if Sioux City were successful in bringing Helena Marine before the Illinois court by way of a third-party claim, Mrs. Fiers would also be free to assert a claim against Helena. It certainly seems probable that she would do so, but in any event the District Judge was entitled to take the prospect into consideration in exercising his discretion by refusing to dissolve the injunction. *Langnes* establishes that judicial discretion must be exercised in an admiralty court's control of the forum by way of the limitation injunction. The notion of discretion means different results in different circumstances. Dissolution was ordered in *Langnes* after the Court noted that there were no other potential claimants. Here the District Judge recognized the additional claimant, applied the *Langnes* principle to different facts, and reached a different result. His action, affirmed by the Court of

Appeals, is not contrary to prior decisions of this Court.

II.

There Is No Conflict Among The Circuits

Petitioner seeks to establish a conflict between the decision of the Eighth Circuit in this matter and a prior decision of the Fifth Circuit in *Humble Oil & Ref. Co. v. Reagan*, 311 F.2d 576 (1962). There is no conflict, and no ground for granting a writ on that basis.

The decision of the Fifth Circuit in the *Humble Oil* case merely adopted the findings and conclusions of the district court without further comment. The opinion of the district court, *In re Humble Oil & Ref. Co.*, 210 F.Supp. 638 (S.D. Tex. 1961), shows beyond question that there was a true single claim before the Court in that instance.

> "Mrs. Reagan and her minor son present only one claim for damages inasmuch as the Texas Death Statutes under which she and her son seek recovery allow only one action for damages. Although these statutes designate numerous beneficiaries, they authorize only one recovery of one sum, with the sum recovered to be apportioned among the statutory beneficiaries according to their several rights." 210 F.Supp. at 629.

Further in the *Humble Oil* case, the district court pointed out that one claimant, The Travelers Insurance Company, asserted that it was entitled to a portion of Mrs. Reagan's claim, and did not assert a separate claim in its own right.

Other comments in the decision with respect to another claimant, Otis Engineering Corporation, indicate the district court's disposition to follow the course of action which the Eighth Circuit approved in this matter. Otis, the employer of the deceased, admitted that it had no ascertainable claim at the time the Court was ruling, but the Court stated:

> "If, at a later time, facts emerge to ripen the claim of Otis, or if other parties with valid claims arising out of this occurrence are allowed to assert them against Humble (realizing that the time for filing claims in the limitation proceeding elapsed on October 30, 1961), then a concourse can take over the situation as it then is." 210 F. Supp. at 638.

The distinction between the *Humble Oil* case and this one is that in *Humble Oil* there was a single claim with three parties claiming some portion of it. Here the Court was confronted with the claim for personal injury of Mrs. Fiers (whether asserted in her own name or by Sioux City in an indemnity action) and the separate, distinct claim of Sioux City for attorneys' fees and expenses incurred in defending the suit by Mrs. Fiers against it in the Illinois court. The same distinction exists with respect to *Petition of M.D. Howlett*, 75 F. Supp. 438 (E.D.N.Y. 1948), also cited by petitioner here as an example of a conflicting decision. The second claim in *Howlett* was that of an insurer seeking to recover that portion of the damages to which it was subrogated by virtue of having paid compensation benefits to an injured employee. It was against a situation of a single claim to be divided between the principle claimant and his subrogee.

Petitioner did cite one decision, *In re Republic of South Korea*, 175 F. Supp. 732 (D. Ore. 1959), which did not make the distinction between indemnification for the principle claim and the separate claim for the cost of defending against it. The Eighth Circuit considered that decision and rejected it as not being persuasive. The existence of a conflict between this decision and one in the District of Oregon does not fall within the statement of considerations governing the granting of a writ expressed in Rule 19.

III.

The Circumstances of this Case Do Not Call For An Exercise of Supervisory Power

The final ground asserted by petitioner in applying for a writ of certiorari is the contention that the Eighth Circuit's decision sanctions action by the district court which is a departure from the usual course of judicial proceedings of such a magnitude as to require exercise of supervisory power by this Court. The only argument advanced is speculation as to how this decision might be guilefully employed in the future to defeat legitimate rights of potential claimants. However, the two examples suggested by petitioner are purely fanciful.

Petitioner suggests that a vessel owner could create multiple claim situations by refusing to pay medical bills incurred by an injured plaintiff or funeral expenses of a deceased seaman. In neither case would such a claim arise which could possibly be subject to a limitation proceeding. If an employer arranged for medical care either by directly ordering or by authorizing such services, he would be obligated to pay those dispensing the services because of his independent con-

tract subsequent to the casualty. In no sense would that be a claim in a limitation proceeding. Otherwise, if the injured seaman himself incurred the medical expense, it would be either a portion of his damage claim or a separate claim for cure. Claims for maintenance and cure are themselves exempt from limitation defenses. *Murray v. New York C. R.R.*, 171 F. Supp. 80 (S.D.N.Y 1959), aff'd, 287 F.2d 152 (2d Cir. 1961). The same would be true with respect to funeral services. The vessel owner would be obligated to pay funeral expenses directly to the undertaker only if he had ordered or authorized the services. He could not "create" a new claimant in such a fashion.

Petitioner's examples demonstrate no departure by the district and appellate courts in this matter from normal admiralty proceeding. There is no need to exercise supervisory power in these circumstances.

CONCLUSION

The Courts below were confronted in this matter with two distinct claims and two separate claimants. A proper injunction was issued, and the District Court was well within its discretionary power in refusing to dissolve that injunction. The Court of Appeals has fairly and properly evaluated the appeal of petitioner seeking to have the injunction vacated. Its refusal to vacate was based on proper application of the decisions of this Court and is consistent with the existing practices of the other appellate courts. There is no valid basis for granting a writ of certiorari.

Respectfully submitted,

ROBERT M. CONTOIS, JR.

JONES, WALKER, WAECHTER,
POITEVENT, CARRERE &
DENEGRE
3501 North Causeway Boulevard
9th Floor
Metairie, Louisiana 70002
Telephone: (504) 837-5325

CERTIFICATE OF SERVICE

I hereby certify that three copies of the foregoing Opposition to Petition for Writ of Certiorari have been served on Michael D. O'Keefe, 1 Mercantile Center, Suite 3400, St. Louis, Missouri 63101 and Charles B. Roscopf, P.O. Box 551, Helena, Arkansas 72342, this 7th day of April, 1978.

_____

Counsel for Respondent